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BOARD OF ELECTION COMMISSIONERS OF THE CITY OF CHICAGO AS A DULY CONSTITUTED ELECTORAL BOARD

Objections of: IVORY D. MITCHELL, DHAFIR H. MAALIK, and MARGIE LEONARD	)	
To the Nomination Papers of: EZRA L. MCCANN	)	No.: 03-EB-ALD-107
Candidate for the office of Alderman of the Fourth Ward, City of Chicago	)	

FINDINGS and DECISION

The duly constituted Electoral Board, consisting of Board of Election Commissioners of the City of Chicago Commissioners Langdon D. Neal, Theresa M. Petrone, and Richard A. Cowen, organized by law in response to a Call issued by Langdon D. Neal, Chairman of said Electoral Board, for the purpose of hearing and passing upon objections ("Objections") of IVORY D. MITCHELL, DHAFIR H. MAALIK, and MARGIE LEONARD ("Objectors") to the nomination papers ("Nomination Papers") of EZRA L. MCCANN, candidate for the office of Alderman of the Fourth Ward in the City of Chicago ("Candidate") to be elected at the Municipal General Election to be held on February 25, 2003, having convened on December 30, 2002, at 10:00 a.m., in Room 800, 69 West Washington Street, Chicago, Illinois, and having heard and determined the Objections to the Nomination Papers in the above-entitled matter, finds that:

1. Objections to the Nomination Papers of the Candidate herein were duly and timely filed.

2. The said Electoral Board has been legally constituted according to the laws of the State of Illinois.

3. A Call to the hearing on said Objections was duly issued by the Chairman of the Electoral Board and served upon the members of the Electoral Board, the Objectors and the Candidate, by registered or certified mail and by Sheriff's service, as provided by statute.

4. A public hearing held on these Objections commenced on December 30, 2002 and was continued from time to time.

5. The Electoral Board assigned this matter to Hearing Examiner CHRISTOPHER AGRELLA for further hearings and proceedings.

6. The Objectors and the Candidate were directed by the Electoral Board's Call served upon them to appear before the Hearing Examiner on the date and at the time designated in the Trial Call. The following persons, among others, were present at such hearing: the Objectors, IVORY D. MITCHELL, DHAFIR H. MAALIK, and MARGIE LEONARD, by counsel; and the Candidate, EZRA L. MCCANN, pro se.

7. The Hearing Examiner ordered that an examination of the registration records be conducted by its clerks and agents under the Board's direction and supervision, in accordance with the laws of Illinois and the rules of the Board.

8. The Hearing Examiner directed all parties to appear and be present, either personally and/or by their authorized representatives during this records examination.

9. The Candidate or his duly authorized representative was present during the examination of the registration records.

10. The Objectors or their duly authorized representatives were present during the examination of the registration records.

11. The examination of the registration records was completed and the Electoral Board hereby adopts and incorporates by reference the results of the records examination conducted by its clerks and agents. The written report of the result of the registration records examination is contained in the Electoral Board's file in this case and is available for inspection upon request of a party.

12. The Electoral Board has considered all evidence and arguments tendered by the parties and the Hearing Examiner's report of recommended findings and conclusions of law.

13. The records examination results indicate that:

    a. The minimum number of valid signatures required by law for placement on the ballot for the office in question is 240;

    b. The number of purportedly valid signatures appearing on the nominating petition filed by the Candidate total 422;

    c. The number of signatures deemed invalid because of objections sustained total 252;

    d. The remaining number of signatures deemed valid total 170.

14. The Candidate requested a master file examination. The results of the master file examination indicate that the number of objections overruled changed from 75 to 77, the number of objections sustained changed from 252 to 250, and the total number of valid signatures remaining on the Candidate's Nomination Papers changed from 170 to 172.

15. The Candidate filed with the Board on January 29, 2003 four separate motions each captioned and titled "PURSUANT TO RULE 8 OF THE RULES OF PROCEDURE OBJECTIONS TO RECORDS EXAMINATION AND MASTER FILE EXAMINATION RESULTS – TIMING."

A. The first motion, received by the Board at 4:57 P.M, stated, "WE ARE REQUESTING AN IMMEDIATE DISMISSAL OF ALL OBJECTIONS TO OUR PETITION AND PLACE EZRA L. MCCANN ON THE BALLOT FOR THE FEBRUARY 25, 2003 ELECTION." This submission consisted of one typed page and contained no exhibits, attachments or further argument. The Hearing Examiner treated this as the Candidate's motion to strike and dismiss the objectors' petition and he denied it, stating that the deadline for filing a motion to strike and dismiss under the Board's rules was January 3, 2003.

B. The second motion, received by the Board at 4:58 PM, stated, "WE ARE REQUESTING AN IMMEDIATE DISMISSAL OF ALL OBJECTIONS TO OUR PETITION DUE TO THE IDENTITY OF SIGNATURES ONLY AND PLACE EZRA L. MCCANN ON THE BALLOT FOR THE FEBRUARY 25, 2003 ELECTION (SEE THE ATTACHED)." This submission consisted of the typed cover page containing the above request for relief and five pages of handwritten attachments. The first attached sheet is titled "Signature Only" and lists 48 sheet and line numbers. All but three of these sheet and line listings contain a name of the person appearing on that sheet and line. The last sheet attached to this submission contains only a list of sheet and line numbers; no names are included. The Hearing Examiner treated this "Signature Only" list as a valid Rule 8 submission except as to: (a) the last page (page 6) that did not include names in violation of Rule 8; and (b) 3 names which the parties apparently considered as "scratch outs."

C. The third motion, received by the Board at 5:02 P.M., stated, "WE ARE REQUESTING AN IMMEDIATE DISMISSAL OF ALL OBJECTIONS TO OUR PETITION DUE TO THE IDENTITY OF SIGNATURES ONLY AND PLACE EZRA L. MCCANN ON THE BALLOT FOR THE FEBRUARY 25, 2003 ELECTION (SEE THE ATTACHED)." This submission consisted of a typed cover page and two handwritten sheets containing sheet and line numbers. The second sheet is titled "Total 65." The Hearing Examiner treated this motion as another motion to strike and dismiss the objector's petition. The Hearing Examiner considered this as the Candidate's legal argument that because the signatures contained on the approximately 65 sheet and line numbers were illegible and unreadable, the Objectors could not possibly have had personal knowledge whether they were "good or bad" signatures. The Candidate agreed that this was indeed his argument. The Hearing Examiner denied this motion, stating that the deadline for filing a motion to strike the objectors' petition was January 3, 2003.

D. The fourth and final motion, received by the Board at 5:11 P.M., stated, "WE ARE REQUESTING THE SUBMITTED AFFIDAVITS BE ACCEPTED WITHOUT

OBJECTION AND PLACE EZRA L. MCCANN ON THE BALLOT FOR THE FEBRUARY 25, 2003 ELECTION (SEE THE ATTACHED)." This submission consisted of two pages: a typed cover page and a one-page handwritten list of sheet and line numbers titled "Affidavits for." Although the motion referenced affidavits, no affidavits were attached to the motion. The Hearing Examiner denied this motion because (a) there were no affidavits attached and no affidavits or copies of them had been filed with the Board or tendered to the Objectors as earlier ordered by the Hearing Examiner (b) the sheet contained only sheet and line numbers and no names in violation of Rule 8.

16. At a hearing on the Candidate's motions, the Hearing Examiner denied several of the Candidate's Rule 8 motions/submissions for not complying with the requirement in Rule 8 that the names of the petition signers be given with sheet and line numbers. The Candidate attempted to present 25 affidavits at the January 31 hearing. These affidavits were purportedly from signers of the Candidate's petition whose signatures were invalidated during the records examination. Five of the affidavits were not notarized. Thus, the Hearing Examiner would not consider them. The Candidate also wanted to present three witnesses. These three witnesses were people who had already signed affidavits, including one of the affidavits that was not notarized. The Candidate told the Hearing Examiner that the only other evidence that he had to present was "downstairs at the Board." In other words, the Candidate wanted the Hearing Examiner to go downstairs to the Board's computer terminals to search for evidence. The Hearing Examiner declined this request. The Hearing Examiner did not admit the Candidate's 25 affidavits nor hear from the three affiants, explaining that it did not matter because even with the 25 affidavits the Candidate did not have enough to bring his signature total to the statutory minimum of 240.

17. The Hearing Examiner found that on the state of the evidence even if the Candidate's 20 valid affidavits and the testimony of the witnesses were accepted into evidence, the Candidate would still be 47 signatures short of the statutory minimum of 240.

18. The Candidate filed a request pursuant to Rule 20 of the Electoral Board's rules of procedure to address the Board concerning the Hearing Examiner's recommended findings. The Electoral Board asked its General Counsel to review the Hearing Examiner's ruling on the Rule 8 motions and to report back to the Board. The General Counsel reported back to the Electoral Board that after examining all of the Candidate's Rule 8 motions/submissions and materials, including the 25 affidavits that the Candidate sought to admit, it was clear that, even assuming that the Candidate were allowed to present evidence for every sheet and line number contained in his submissions (excluding the Candidate's submission concerning so-called "unreadable" signatures) and further assuming that the Electoral Board ruled in the Candidate's favor on each and every such signature, the Candidate would still not have 240 valid signatures on his petitions. Thus, it made no difference how the Hearing Examiner ruled on the Candidate's Rule 8 motions/submissions (again excluding the "unreadable" signatures). After eliminating (a) duplicates and (b) the sheet and line listings for signatures that either were not objected to

by the Objector, were not properly objected to by the Candidate at the records examination, or have already been tallied as valid signatures for the Candidate, there were only 65 total possible signatures which have been preserved for appeal and further evidentiary hearings. This assumed sheet and line listings that did not comply with the requirements of Rule 8.

19. The Electoral Board found that under the Candidate's "best case scenario" (again excluding the "unreadable" signatures), assuming that each and every one of these 65 signatures were ruled as valid and counted in favor of the Candidate, he would still fall short of the 240 mark by 3 signatures. Even if the Electoral Board were to consider the affidavit of Eddie Davis, whose signature had not been identified on any of the Candidate's four Rule 8 motions, the Candidate was still short of the 240 minimum signature requirement by 2 signatures.

20. The Candidate argued that the Objectors' objections to signatures that are illegible or unreadable should be dismissed because the Objectors could not possibly have had knowledge whether the signature is genuine or not by virtue of the fact that it is unreadable. The Candidate cited three Board decisions – 03-EB-ALD 141, 03-EB-ALD-171 and 03-EB-ALD-172 – in support of his argument that the Board and its hearing officers have held that the objectors has the burden of proving that an illegible or unreadable signature is invalid. However, the Electoral Board has never ruled in this manner. The Electoral Board finds that the Hearing Examiner properly denied this motion.

21. The Electoral Board finds that the number of valid signatures appearing on the Candidate's nominating petition following completion of the records examination, the master file examination and the hearings on the Candidate's Rule 8 motion is below the minimum number of valid signatures required by law to be placed upon the official ballot as a candidate for election to the office of Alderman of the Fourth Ward of the City of Chicago.

22. The Electoral Board finds, therefore, that the Objectors' Petition is sustained in part and overruled in part as more fully indicated in the results of the records examination, the master file examination and the Rule 8 hearing.

23. For the reasons stated above, the Electoral Board finds that the Nomination Papers of EZRA L. MCCANN are not valid.

IT IS THEREFORE ORDERED that the Objections of IVORY D. MITCHELL, DHAFIR H. MAALIK, and MARGIE LEONARD to the Nomination Papers of EZRA L. MCCANN, candidate for election to the office of Alderman of the Fourth Ward of the City of Chicago are hereby SUSTAINED and said Nomination Papers are hereby declared INVALID and the name of EZRA L. MCCANN, candidate for election to the office of Alderman of the Fourth Ward of the City of Chicago, SHALL NOT be printed on the official ballot for the Municipal General Election to be held on February 25, 2003.

Dated: Chicago, Illinois, this Tenth day of February, 2003.

Langdon D. Neal, Chairman

Theresa M. Petrone, Commissioner

Richard A. Cowen, Commissioner

NOTICE: Pursuant to Section 10-10.1 of the Election Code (10 ILCS 5/10-10.1) a party aggrieved of this decision and seeking judicial review of this decision must file a petition for judicial review with the Clerk of the Circuit Court of Cook County within 10 days after the decision of the Electoral Board.

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, COUNTY DIVISION

EZRA L. McCANN,	)	
	)	
Petitioner,	)	
	)	
vs.	)	No. 03 CO EL 31
	)	
THE CHICAGO BOARD OF ELECTION COMMISSIONERS SITTING EX-OFFICIO AS THE MUNICIPAL OFFICERS ELECTORAL BOARD and its members, LANGDON NEAL, THERESA PETRONE, and RICHARD COWEN; and IVORY D. MITCHELL, DHAFIR H. MALIK, AND MARGIE LEONARD,	)	Election Case
	)	
Respondents.	)	

ORDER

THIS CAUSE coming to be heard before the court on Ezra L. McCann's petition for judicial review, it is hereby ORDERED:

1. The decision of the respondents, Chicago Board of Election Commissioners, sitting ex-officio as the Municipal Officers Electoral Board, is hereby AFFIRMED.

2. The Chicago Board of Election Commissioners shall NOT PRINT the name of Ezra McCann on the ballot as a candidate for the office of Alderman of the 4th Ward of the City of Chicago at the February 25, 2003 Consolidated Primary Election.

3. This is a final and appealable order and there is no just cause to delay enforcement or appeal hereof.

ENTER:

CIRCUIT COURT OF COOK COUNTY
ENTERED
FEB 21 2003

Judge Robert Bertucci JUDGE
Robert W. Bertucci - 1584

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